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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

2005 MAY -21P 2:46

DOCKETED

MAY 02 2005

JEFF HATCH-MILLER Chairman  
WILLIAM A. MUNDELL  
MARC SPITZER  
MIKE GLEASON  
KRISTIN K. MAYES

AZ CORP COMMISSION  
DOCUMENT CONTROL

DOCKETED BY

*[Signature]*

IN THE MATTER OF THE FORMAL  
COMPLAINT OF ACCIPITER  
COMMUNICATIONS, INC., AGAINST  
VISTANCIA COMMUNICATIONS, L.L.C., SHEA  
SUNBELT PLEASANT POINT, L.L.C., AND COX  
ARIZONA TELECOM, LLC.

DOCKET NO. T-03471A-05-0064

PROCEDURAL ORDER

**BY THE COMMISSION:**

On January 31, 2005, Accipiter Communications, Inc. ("Accipiter") filed with the Arizona Corporation Commission ("Commission") a formal complaint against Vistancia Communications, L.L.C. ("Vistancia"), Shea Sunbelt Pleasant Point, L.L.C. ("Shea Sunbelt"), and Cox Arizona Telcom, L.L.C. ("Cox").

On February 22, 2005, Cox filed a Motion to Dismiss stating that Accipiter's Complaint fails to state claims upon which relief can be granted; seeks relief beyond the jurisdiction of the Commission; and seeks relief without the joinder of indispensable parties.

On February 28, 2005, counsel for Vistancia and Shea Sunbelt filed a letter to the Commission stating that Vistancia and Shea Sunbelt are not public service corporations and do not hold Certificates of Convenience and Necessity from the Commission and therefore the Commission has no jurisdiction over them.

On March 28, 2005, Accipiter filed a Response in Opposition to Cox's Motion to Dismiss.

Also on March 28, 2005, counsel for the Commission's Utilities Division Staff ("Staff") filed a Notice of Appearance in this matter.

On April 8, 2005, Staff counsel filed a letter directed to counsel for Vistancia and Shea Sunbelt asking for an explanation within 10 days as to why Vistancia is not acting as a public service corporation under Arizona law.

On April 12, 2005, Cox filed a Reply in Further Support of its Motion to Dismiss.

1 On April 15, 2005, a Procedural Order was issued directing Staff to file by May 6, 2005, a  
2 pleading in response to the legal arguments raised by Accipiter and the various responsive pleadings  
3 filed by Cox and Accipiter. Staff was also directed to respond to the jurisdictional claims raised by  
4 Vistancia and Shea.

5 On April 25, 2005, counsel for Vistancia filed a letter in response to Staff's April 8, 2005  
6 letter setting forth the basis of Vistancia's claim that it is not a public service corporation subject to  
7 the Commission's jurisdiction.

8 Also on April 25, 2005, Staff filed a Motion to Compel responses from Cox to Staff's first set  
9 of Data Requests. Staff claims that responses were due by March 18, 2005 yet, despite several  
10 assurances from Cox that responses would be forthcoming, to date Cox has failed to respond to the  
11 Data Requests.

12 IT IS THEREFORE ORDERED that a Procedural Conference will be conducted on May 4,  
13 2005, at 1:45 p.m., at the offices of the Commission to discuss Staff's Motion to Compel and any  
14 other relevant procedural matters.

15 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,  
16 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at  
17 hearing.

18 Dated this 2<sup>nd</sup> day of May, 2005

19  
20 

21 DWIGHT D. NODES  
22 ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE

23 Copies of the foregoing mailed/delivered  
24 this 2<sup>nd</sup> day of May, 2005 to:

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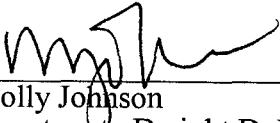
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26 Secretary to Dwight D. Nodes  
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28